

Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 99-243
FM Table of Allotments,)	RM-9675
FM Broadcast Stations.)	RM-10121
)	RM-10122
(Thorndale, Cameron, Rosebud, and Thrall,)	RM-10123
Texas) ¹)	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 19, 2003

Released: March 21, 2003

By the Assistant Chief, Audio Division:

I. The Audio Division has before it a *Notice of Proposed Rulemaking*² issued at the request of Houston Christian Broadcasters, Inc. ("HCB"), requesting the allotment of Channel **286A** at Thorndale, Texas. HCB further requested the reservation of Channel 286A at Thorndale for noncommercial educational use and amendment of its application for Channel 257A to specify operation on Channel ***286A** (File No. BPED-970911MA).³ HCB filed comments reiterating its interest in applying for Channel ***286A** at Thorndale. Counterproposals were filed by Munbilla Broadcasting Corporation ("MBC") and Elgin FM Limited Partnership ("Elgin FM"). A one-step application filed by Cameron Broadcasting Company ("Cameron Broadcasting") has been accepted as a counterproposal.⁴ Comments and reply comments were filed by HCB, MBC, Elgin FM and Cameron Broadcasting.

¹ The communities of Rosebud, Thrall and Cameron, Texas, have been added to the caption.

² See *Thorndale, Texas*, 12 FCC Rcd 10539 (M.M. Bur. 1999).

³ HCB, one of six applicants for Channel 257A at Thorndale, was the only applicant proposing to use Channel 37A as a noncommercial educational station. In an attempt to resolve the mutually exclusive application conflict, HCB filed the petition for rule making in this proceeding proposing the reservation of Channel 286A at Thorndale and amendment of its application for Channel 257A without loss of cut-off protection.

⁴ The counterproposals were given public notice on June 1, 2001. Report No. 2487.

⁵ Cameron Broadcasting filed a petition for reconsideration of the *Notice of Proposed Rule Making* in this proceeding, contending that the proposed allotment of Channel 286A at Thorndale conflicted with its construction permit that upgraded Station KHTZ, Cameron, Texas, from Channel 232A to Channel 286C3. The grant of the construction permit was subsequently rescinded, and the rescission was affirmed by the Commission, finding that the application for Channel 286C3 must be considered as a counterproposal in this proceeding. See *Cameron Broadcasting Company*, 16 FCC Rcd 8164 (2001). We will dismiss Cameron Broadcasting's reconsideration petition because a reconsideration petition may only be filed against a final action in a rulemaking proceeding, and not against an interlocutory order such as a Notice of Proposed Rule Making. See 47 C.F.R. § 1.429(a). See also *Glenwood Springs, CO*, 46 R.R. 2d (Policy and Rules Div. 1980). In any event, the reconsideration petition is moot in view of the Commission's decision in *Cameron Broadcasting* and our actions in this *Report and Order*.

2. MBC counterproposed the allotment of Channel 286A at Rosebud, Texas, as a first local service (RM-10121). In support of its proposal, MBC states that Rosebud is an incorporated community with a U.S. Census population of 1,638 people, has its own zip code, numerous local businesses, churches and is a community warranting a licensed radio service. MBC provided a technical showing that Channel 286A could be allotted to Rosebud in full compliance with the Commission's technical requirements. MBC stated its intent to file an application for Channel 286A at Rosebud. Elgin FM, in its counterproposal (RM-10122), requested the allotment of Channel 286A at Thrall, Texas, as that community's first local service. Elgin FM provided information supporting community status for Thrall. According to Elgin FM, Thrall has a population of 664 people, has its own local government, school system, fire and police departments, zip code and post office along with numerous businesses and churches. Elgin FM states that it will apply for Channel 286A at Thrall, Texas. The third counterproposal in this proceeding is the one-step application filed by Cameron Broadcasting Company to substitute Channel 286C3 for Channel 232A at Cameron, Texas (RM-10123). The application has been accepted as a counterproposal since it was filed after HCB's rulemaking petition but prior to the deadline for filing counterproposals in this proceeding and is in conflict with the proposed allotment of Channel 286A at Thorndale, Texas.

3. **Discussion.** Elgin FM filed comments on November 19, 2002, withdrawing its pending counterproposal requesting allotment of Channel 286A at Thrall, Texas. Elgin FM filed its request pursuant to Section 1.420(j) of the Commission's Rules, and included a statement that neither it nor any of its principals have received nor have been promised any payment for this withdrawal. On November 19, 2002, HCB also filed comments withdrawing its pending petition for rulemaking requesting the allotment of Channel 286A at Thorndale, Texas, and reservation of the channel for noncommercial educational use. HCB filed its request pursuant to Section 1.420(j) of the Commission's Rules, providing a statement that neither it nor any of its principals have received nor have been promised any payment for withdrawal of the proposal for Thorndale, Texas. On January 17, 2003, Munbilla Broadcasting Properties, Ltd ("MPBL"), filed comments requesting withdrawal of its counterproposal by which MBPL's predecessor-in-interest, Munbilla Broadcasting Corporation, requested the allotment of Channel 286A at Rosebud, Texas, as a first local service. MBPL filed a Dismissal Agreement demonstrating compliance with Section 1.420(j) of the Commission's Rules, stating that neither MBPL nor MBC, nor any of their principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the counterproposal, originally filed by MBC, seeking the allotment of Channel 286A at Rosebud, Texas.

4. Although comments were initially filed supporting allotments at Thorndale, Rosebud and Thrall, Texas, comments have been received from the petitioning parties withdrawing interest in their respective communities. As stated above, all withdrawal requests have been filed pursuant to Section 1.420(j) of the Commission's Rules. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, since interest has been withdrawn for allotments at Thorndale, Rosebud and Thrall, Texas, and no other parties have expressed an interest in these allotments, we shall dismiss the proposals for Thorndale, Rosebud and Thrall, Texas.⁶ The withdrawal of the proposals for Thorndale, Rosebud and Thrall, Texas, removes the conflict with the one-step application filed by Cameron Broadcasting Company, requesting the allotment of Channel 286C3 at Cameron, Texas. The application for Channel 286C3 at Cameron will be processed subject to Commission Rules and Regulations.

5. In view of the above, IT IS ORDERED, That the Petition for Rule Making filed by Houston Christian Broadcasters, Inc. (RM-9675), requesting the allotment of Channel 286A at Thorndale,

⁶ See, e.g., *Joshua Tree, California*, 4 FCC 3801 (MM 1989), *Bridport, Vermont*, 5 FCC Rcd 6172 (MM 1990), and paragraph 2 of the Appendix to the *Notice*.

Texas, reservation of the channel for noncommercial use, and modification of the construction permit for Channel 257A to specify operation on Channel *286A at Thomdale, Texas, **IS DISMISSED**.

6. IT **IS FURTHER ORDERED**, That the counterproposal filed by Munbilla Broadcasting Corporation (RM-10121) requesting the allotment of Channel 286A at Rosebud, Texas, **IS DISMISSED**.

7. IT **IS FURTHER ORDERED**, That the counterproposal filed by Elgin FM Limited Partnership (RM-10122), requesting the allotment of Channel **286A** at Thrall, Texas, **IS DISMISSED**.

8. For further information regarding a proceeding listed above, contact Kathleen Scheuerle (202) 418-2180.

9. IT **IS FURTHER ORDERED**, That this proceeding **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau